

GIS POLLUTION CONTROL BOARD
December 20, 1977

ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	PCB 77-69
)	
ANDREW J. KAUFMAN,)	
)	
Respondent.)	

MR. RUSSEL R. EGGERT, ASSISTANT ATTORNEY GENERAL, APPEARED FOR THE COMPLAINANT.
MR. L. STANTON DOTSON, ATTORNEY AT LAW, APPEARED FOR THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Mr. Werner):

I. LEGAL BACKGROUND

This matter comes before the Board upon the March 1, 1977 Complaint of the Environmental Protection Agency (Agency) charging Andrew J. Kaufman with violations of Rules 210, 302, 303(a), 303(b), 304, 305, 306, 308, 310(b), and 314(f) of Chapter 7: Solid Waste Regulations (Chapter 7), thereby violating Rule 301 of Chapter 7 and Section 21 of the Environmental Protection Act (Act). Hearings were held on July 28, July 29, August 15, and August 22, 1977.

At the August 22, 1977 hearing, Kaufman made a motion to dismiss based on an April 8, 1976 compliance agreement between Kaufman and the Coles County State's Attorney. The motion argues in the alternative that Kaufman is immune from state prosecution or that the Agency is estopped from prosecuting this matter. The motion is denied. A county State's Attorney cannot bind a state agency by way of a compliance agreement where the state agency was not a party to that agreement. Healy v. Deering, 231 Ill. 423, at 431-432 (1907); DuPont v. Miller, 310 Ill. 140, at 148-149 (1923).

On March 21, 1977, the Agency filed a First Request to Admit Facts which Kaufman, through his attorney, refused to answer on Constitutional grounds. Following full argument on this issue, the Hearing Officer ordered Kaufman to answer the request for admissions on April 19, 1977. No answers were filed with the Board. Under Procedural Rule 314(c),

each of the matters referred to in the First Request to Admit Facts are deemed admitted by Kaufman. Therefore, the Board finds Kaufman in violation of Rules 210, 301, 302, 303(a), 303(b), 304, 305, 306, 308, 310(b), and 314(f) of Chapter 7 and Section 21 of the Act.

II. FACTUAL BACKGROUND

Kaufman owns and operates a solid waste management site located near Humboldt, Coles County, Illinois. Reports of Agency inspections on the following dates were placed into evidence to prove violations of Chapter 7:

July 8, 1975	Testimony of Diefenback, R. 48-61
Aug. 28, 1975	Testimony of Diefenback, R. 63-66
Sept. 24, 1975	Comp. Ex. 26
Nov. 4, 1975	Comp. Ex. 27 (with photos*)
Dec. 22, 1975	Comp. Ex. 31 and 33 (with photos, Ex. 32 ¹)
Jan. 13, 1976	Testimony of Diefenback, R. 67-70
May 6, 1976	Comp. Ex. 28
Sept. 15, 1976	Comp. Ex. 34 (with photos Ex. 35 ¹)

In addition, a report of an inspection made on April 20, 1977 (Comp. Ex. 36, with photos, Ex. 37*) was admitted as an Agency exhibit for the limited purpose of justifying a penalty. These inspection reports will be referred to by date only in the remainder of this Opinion.

III. REVIEW OF EVIDENCE

Agency inspection reports show a violation of Rule 303(a) on the following dates: August 28, 1975, December 22, 1975,

*Although the Board appreciates the introduction of the photos in the evidence, the descriptions attached to them were imprecise and did not assist the Board in visualizing the physical characteristics of the site.

May 6, 1976, and September 15, 1976. No refuting evidence was presented. Reports list violations of Rule 303(b) on the following dates: August 28, 1975, September 24, 1975, November 4, 1975, December 22, 1975, January 13, 1976, and September 15, 1976.

The Agency brought forth evidence showing violation of Rule 304, for lack of adequate Supervision and Equipment. Kaufman was not present at the site during the November 4, 1975 inspection and admitted that he was off the site on the day prior to the July 8, 1975 and January 13, 1976 inspections (R.66, 181, 91-2). In addition, the record contains numerous references to equipment failures. Kaufman admits to these breakdowns of his bulldozer (R.434).

Violations of Rule 305(a) were reported on all inspection dates. Kaufman admitted to the inspector that he had failed to provide daily cover on the days prior to the July 8, 1975 and August 28, 1975 inspections (R.60, 66, 81, 85). A third violation is probable, but not for certain, from the observation by the inspector of refuse frozen into the bottom of a shallow working trench on December 22, 1975.

Violations of Rule 305(b) were reported on November 4, 1975, January 13, 1976, May 6, 1976, and September 15, 1976. However, to prove a violation of the intermediate cover requirement, the Agency must show an intent not to deposit refuse on the area for 60 days or the actual passing of 60 days without new deposits. No such evidence appears in the record.

Violations of Rule 305(c) were reported on November 4, 1975, December 22, 1975, January 13, 1976 (see R. 91), May 6, 1976, and September 15, 1976; Kaufman admitted that the final cover at the site was inadequate (R.426-7). Two other witnesses also testified as to the lack of adequate final cover: Lesley Young, a trash hauler with knowledge of conditions at the site but without knowledge of the regulations (R.282-284) and William Daley, an earth contractor hired by Kaufman to place final cover over portions of the site (R.330-332).

An alleged violation of Rule 306 was reported on December 22, 1975. However, the inspection did not take place at the end of the working day.

Violations of Rule 308 were reported on September 24, 1975, November 4, 1975, December 22, 1975, May 6, 1976, and September 15, 1976. The salvage area is located on the west end of the site near a working trench of the landfill.

A violation of Rule 314(f) was reported on September 15, 1976. In addition, another inspector observed large numbers of flies at the site on several occasions, although specific dates were not mentioned. (R.166). A violation of Rules 210 and 310(b) was alleged in the complaint. Agency inspection reports made no mention of this violation. Kaufman did, however, request a permit to allow acceptance of liquid wastes. (Comp. Ex. 4B)

Finally, violations of Rule 302 were reported for all inspection dates. First, the record contains substantial evidence that Kaufman was accepting more than 10 cu. yds. of refuse per day. Kaufman himself had requested a revised operating permit allowing him to accept 60 cu. yds. per day (Comp. Ex. 4A and 4B). It is also beyond a doubt that Kaufman accepted commercial wastes. A "glass road" made up of flashbulbs has been part of the site since at least December 2, 1975 (Comp. Ex. 30). In addition, trash hauler Young, who regularly deposits refuse at Kaufman's landfill, testified that his entire trash route consists of commercial customers (R.287-8). The other three alleged violations deal with the cover requirements and are discussed on pp. 3.

III. PENALTY

The Board has considered the Section 33(c) factors in assessing a penalty for these violations. Kaufman has the burden of producing evidence concerning these factors. Processing and Books, Inc. v. Pollution Control Board, 64 Ill. 2nd 68, 351 N.E. 2nd 865 (1976). The character and degree of injury is primarily related to a leachate problem. Inspectors observed some seeping of leachate off the site on all inspection dates and observed a noticeable flow of leachate off the west end of the site toward the nearby Kaskaskia River on September 24, 1975 and December 22, 1975. Acceptance of liquid wastes at the site might also cause environmental damage as well as contribute to the leachate problem if not properly contained.

The social and economic value of the landfill site was clearly established. Numerous trash haulers testified that Kaufman's landfill was the only place in Coles County where refuse could be deposited without constant damage to their equipment.

Based on the evidence available, we find the landfill site is suitable to its location if properly operated.

Compliance appears to be both technologically feasible and economically reasonable. In fact, Kaufman has already taken many of the steps needed to achieve total compliance.

Numerous mitigating factors appear in the record. Cold and wet weather contributed to some violations. Equipment breakdowns, also a major cause for non-compliance, have been alleviated by the purchase of a second bulldozer (R.466). Nonetheless, Kaufman now understands that there must be sufficient equipment, personnel, and supervision available at the site to comply with Rule 304 (R.131-2). Kaufman's failure to place final cover is attributable in part to erroneous advice received from a trash hauler Lesley Young (R. 282). However, when informed of proper procedures he contracted with Daley for a placement of proper final cover (R.331). Kaufman has contracted with Douglas Andrews, P.E., to draw up plans for the purpose of 1) improving the physical characteristics of the site to control leachate seepage and 2) submitting an application for a revised permit from the Agency. Andrews testified that the original plan was deficient and did not comport with the realities of the situation, especially in allowing Kaufman to accept only 10 cu. yds. of refuse per day (R. 109-10, 130). Subsequently, Kaufman was not made aware that his compliance agreement with the Coles County State's Attorney was not binding on the State of Illinois. To ameliorate any future problems, Andrews is willing to provide sufficient supervision over the site to educate Kaufman as to proper operation of his landfill. Numerous witnesses have described Kaufman as a man of great integrity who would make a genuine effort to comply with Chapter 7.

Based on the above factors, the Board assesses a penalty of \$200 for these violations.

This Opinion and Order constitutes the findings of fact and conclusions of law of the Board.


ORDER

It is the Order of the Pollution Control Board that:

1. Kaufman has violated Rule 210, 301, 302, 303(a), 303(b), 304, 305, 306, 308, 310(b), and 314(f) of Chapter 7 and Section 21 of the Act.
2. Kaufman shall cease and desist from the aforementioned violations within 150 days of the date of this Order.
3. Kaufman shall apply to the Agency for a revised operating permit within 45 days of the date of this Order.
4. Within 30 days of the date of this order, Kaufman shall pay a penalty of \$200, payment to be made by certified check or money order to:

State of Illinois
Fiscal Services Division
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

I, Christian L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 20th day of November, 1977 by a vote of 5-0.


Christian L. Moffett, Clerk
Illinois Pollution Control Board